IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.365 of 2000

Decided on:October 29, 2007.

State of H.P. **…Appellant.**

VERSUS

Roshan Lal & Ors. **….Respondents.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.Virender Verma, Addl.A.G.**

For the respondents: **Mr.Anand Sharma, Advocate.**

Kuldip Singh, Judge (Oral)

The State has come in appeal for enhancement of sentence passed by learned Additional Sessions Judge (1), Kangra at Dharamshala (Camp at Una) on 10.3.2000 in Criminal Appeal No.41/94 reducing the sentence of respondents under Sections 41, 42 of the Indian Forest Act to imprisonment till rising of the Court and to pay fine of Rs.500/- each and in default of payment of fine to undergo simple imprisonment for one month and also acquitting the respondents under Section 120-B I.P.C.

2. The facts, in brief, as emerge from the prosecution story, are that Roshan Lal respondent No.1 on 24.8.1989 was driving truck No.HID-1191 from Mubarkpur side, at about 4.35 p.m. the truck was

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Whether the reporters of the local papers maybe allowed to see the judgment? Yes

stopped at Gagret Excise Barrier for payment of tax. As per G.R.No.272 dated 23.8.1989 the truck was carrying 500 apple boxes. The Excise and Taxation Officer of the Barrier deputed P.R.Naryal, Sanjay Patial and Jodinger Singh for checking the truck. Biswas Kumar, Incharge, Police Barrier Gagret, Constable Vinod Kumar and Mulkh Chand were also joined for checking. The truck was unloaded and it was found that truck instead of carrying 500 apple boxes was carrying 220 boxes and 42 sleepers of Kail and Devdar. Respondent No.1 Roshan Lal could not produce any export permit for transportation of sleepers. On the application of Excise and Taxation Officer Ext.PW-1/B an F.I.R. Ext.PW-1/A was registered. After completion of investigation, challan was put up against four persons, namely, Roshan Lal, Bir Singh, Sham Lal and Khem Chand under Sections 41, 42 of the Indian Forest Act and under Section 120-B I.P.C. and accordingly notice of accusation was put up under Sections 41, 42 of the Indian Forest Act and under Section 120-B I.P.C. After recording statements of prosecution witnesses, examination of respondents / accused under Section 313 Cr.P.C., the learned Sub Divisional Judicial Magistrate, Amb convicted the respondents on 5.4.1994 under Sections 41, 42 of the Indian Forest Act and under Section 120-B I.P.C. and sentenced each respondent for a period of three months under Sections 41, 42 of the Indian Forest Act and another period of three months under Section 120-B I.P.C. with fine of Rs.500 for each offence. In default of payment of fine, each respondent was directed to further undergo one month's

simple imprisonment for each offence. The sentences were ordered to run concurrently. Khem Chand accused was acquitted. The respondents filed appeal against their conviction and sentence which was disposed of on 10.3.2000 by learned Additional Sessions Judge, as noticed above.

3. I have heard the learned Additional Advocate General for the State, Mr.Anand Sharma, Advocate for the respondents and gone through the record. The learned Additional Advocate General has submitted that learned Additional Sessions Judge has erred in reducing the sentence. The sentence awarded by the learned trial Court was just and reasonable which should have been upheld by the Additional Sessions Judge in the facts and circumstances of the case. The learned counsel for the respondents has submitted that the respondents have committed only technical offence and, therefore, after taking into consideration the facts of the case, the learned Additional Sessions Judge has sentenced the respondents rightly. He has supported the impugned judgment.

4. It is not the case of the prosecution that the respondents were carrying illicit timber in the truck. In fact, in the statement of respondent Khem Chand under Section 313 Cr.P.C. it was put to him that the trees which were sanctioned to Leela Devi, his sister in law, in T.D. Scheme were felled by him and converted into 62 sleepers and out of them 42 sleepers were sold by him to Bir Singh at the rate of Rs.200 per sleeper. In other words, as per prosecution, 42 sleepers recovered from the truck were of Leela Devi which were sold

to Bir Singh and these were not stolen or illicit. The respondents have committed technical offence of transporting 42 sleepers without permit and that is why they were convicted by the trial Court as well as by learned Additional Sessions Judge. The prosecution has miserably failed to prove the offence under Section 120-B against the respondents and the learned Additional Sessions Judge has rightly acquitted the respondents under Section 120-B I.P.C. The learned Additional Sessions Judge has relied ***State of H.P.*** *Versus* ***Anant Ram [1989 SLJ 975]*** for sentencing the respondents under Sections 41, 42 of the Indian Forest Act to imprisonment till rising of the Court and to pay a fine of Rs.500 each and in default of payment of fine each respondent to undergo simple imprisonment for one month. The source of timber was not illicit and, therefore, in the facts and circumstances of the case, the learned Sessions Judge has rightly reduced the sentence of each respondent, as noticed above. No case for interference has been made out. Hence, the appeal is dismissed. Bail bonds, furnished by the respondents, are discharged.

October 29, 2007. ***(Kuldip Singh), J.***

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